

In the Court of Appeals of the State of Alaska

Wyatt Redfox,

Petitioner,

v.

State of Alaska,

Respondent.

Court of Appeals No. **A-13746**

Order

Petition for Review

Date of Order: **1/12/2021**

Trial Court Case No. **3AN-20-05703CR**

Before: Allard, Chief Judge, Wollenberg, and Harbison, Judges

Wyatt Redfox is charged with multiple felony assaults and is awaiting trial in the superior court. Trial is currently delayed because of the COVID-19 pandemic.

At a September 14, 2020 representation hearing, Redfox waived his right to counsel and began representing himself. Shortly after waiving his right to counsel, Redfox moved to disqualify the superior court judge assigned to his case, Superior Court Judge Catherine M. Easter, asserting that Judge Easter was biased against him. Judge Easter denied the motion, finding no basis for disqualification. Pursuant to AS 22.-20.020(c), Superior Court Judge John C. Cagle was assigned to review Judge Easter's denial of the motion to disqualify.¹ Judge Cagle subsequently issued a seven-page written order affirming the denial of the motion to disqualify.

Redfox now petitions for review of Judge Cagle's order, asserting again that Judge Easter is biased and that she should be disqualified from his case. The State

¹ AS 22.20.020(c) ("If a judicial officer denies disqualification the question shall be heard and determined by another judge assigned for the purpose by the presiding judge of the next higher level of courts or, if none, by the other members of the supreme court. The hearing may be ex parte and without notice to the parties or judge.").

argues that Redfox's allegations of bias are baseless, but does not oppose granting review of Judge Cagle's order so that the question of disqualification can be resolved before Redfox goes to trial.

For the reasons explained here, we find no error in Judge Easter's denial of the motion to disqualify and Judge Cagle's affirmance of Judge Easter's order. Accordingly, we GRANT the petition for review with regard to the judicial disqualification issue and we AFFIRM the denial of Redfox's motion to disqualify Judge Easter for cause.²

Redfox's allegations of bias against Judge Easter

Redfox alleges that various statements Judge Easter made in the September 14, 2020 representation hearing demonstrate bias against him. He further alleges that these statements show that Judge Easter will unjustifiably delay resolution of his case.

During the course of explaining the benefits of counsel and the risks of proceeding *pro se*, Judge Easter noted that pretrial motions were not "typically" filed this early in criminal cases. (Redfox was indicted on July 30, 2020; the representation hearing took place on September 14, 2020.) Redfox asserts that this statement shows that Judge Easter will unjustifiably delay rulings in his case because Alaska Criminal

² As part of his petition for review, Redfox has also requested that we direct the Department of Corrections to furnish him with a laptop computer that allows him to prepare and file his pleadings electronically. But, as the State points out, Redfox did not raise this issue in the superior court and this issue is therefore not properly before this Court. Accordingly, we DENY without prejudice this portion of his petition for review. Redfox also requests that we order the superior court to provide him with the audio recording and log notes from the grand jury proceeding. The State does not oppose this request. On remand, these materials should be provided to Redfox if they have not already been provided.

Rule 12(c) requires pretrial motions to be filed within 45 days of arraignment and Redfox's case was already past that deadline. But, as the State points out, Criminal Rule 12(c) allows that deadline to be extended "for good cause shown," and, as a practical matter, many pretrial motions are not filed until after the 45-day deadline. In reviewing this statement for bias or the appearance of bias, Judge Cagle concluded that the statement was meant simply to advise Redfox as to the typical motion timelines and was therefore not indicative of bias. We agree with this analysis.

As part of her description of the risks of proceeding *pro se*, Judge Easter stated that neither she nor her staff will serve subpoenas for Redfox because they "can't act as [his] attorney." Redfox asserts that this statement indicates that Judge Easter will "prevent reasonable subpoena requests." We find no basis for this claim. Viewed in the context of the representation hearing, it is clear that Judge Easter was simply advising Redfox that securing subpoenas while he is in custody will be more difficult without an attorney — which is true. Redfox interprets her statement as indicating that no one in the court system will assist him in securing subpoenas. This is untrue. Criminal Rule 17 provides a mechanism by which Redfox can seek assistance from the clerk of court. However, Judge Easter is correct that neither she nor her staff will *personally* serve subpoenas for Redfox. After reviewing this statement in the context of the larger hearing, Judge Cagle concluded that, even assuming *arguendo*, that Judge Easter erred in not also discussing Criminal Rule 17, this error does not give rise to any appearance of bias or any reason to believe that Judge Easter will prevent Redfox from obtaining subpoenas. We agree with this analysis.

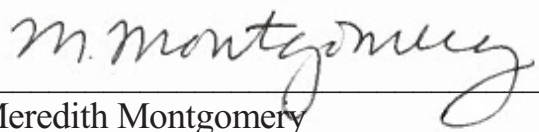
Lastly, in advising Redfox regarding the challenges he will face proceeding without an attorney, Judge Easter noted that Redfox would not be able to personally interview the alleged victim because he was not allowed to contact the victim directly or

indirectly. Redfox asserts that this statement indicates that Judge Easter will “infringe upon defendant’s ability to have and conduct a reasonable investigation to raise a complete defense.” We find no merit to this claim. Alaska Statute 12.61.120 limits the information about a witness or victim that may be disclosed to a defendant. Subsection (b) sets forth a procedure by which a defendant, who is proceeding *pro se* and who the court determines poses a continuing threat to the witness or victim, may have a representative specified by the court who can contact the witness or victim on the defendant’s behalf. Judge Easter informed Redfox of this procedure, and she more generally advised Redfox that the process would be much simpler if he had counsel. This is correct.

In sum, all of the statements that Redfox challenges are statements that were made in the context of advising Redfox regarding the benefits of counsel and the risks of proceeding *pro se* — an advisement that Judge Easter was required to make before accepting Redfox’s waiver of counsel.³ None of the statements are indicative of bias nor do they give rise to any appearance of bias. Accordingly, we AFFIRM the denial of Redfox’s motion to disqualify Judge Easter for cause.

Entered at the direction of the Court.

Clerk of the Appellate Courts


Meredith Montgomery

³ See *McCracken v. State*, 518 P.2d 85, 91-92 (Alaska 1974).

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January 12, 2021

cc: Judge Cagle
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